THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on : 22.05.2007

WP(C) No.2335/2007

KUMARI SHUBHRA DHYANI ...Petitioner

– versus -

THE MANAGING COMMITTEE
DELHI PUBLIC SCHOOL & ORS. ...Respondents

Advocates who appeared in this case:

For the Petitioner : Ms Indrani Ghose
For the Respondent No.1 : Mr K. C. Mittal with Mr Puneet Mittal
For the Respondent No.2 : Mr Atul Kumar
For the Respondent No.3 : Ms Zubeda Begum

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J

1. The petitioner is a student of the Delhi Public School, Mathura Road, New Delhi. She has filed this writ petition because she has been detained in class XI by the said school and her representation against such detention has also been rejected by the review committee on 12.02.2007. The impugned rejection letter dated 12.02.2007 reveals that the review committee

had considered the application of the petitioner for review of the final result and that the said committee had concluded that the result was in conformity with the school rules leaving no scope for any change. The petitioner's parents were requested to direct the petitioner to attend regular classes for class XI from 1st April, 2007 with seriousness and regularity.

2. The petitioner had previously appeared in the class X examinations conducted by the Central Board of Secondary Education in March, 2006. Thereafter, in April 2006, the petitioner was provisionally promoted to class XI as were all other students who appeared in the Board Examinations. However, though the petitioner had opted for the science stream, she was not permitted to take up that stream on account of the fact that in the pre-board examination, the petitioner had secured only 66.6 % marks in the aggregate.

3. In May 2006 the class X CBSE results were declared and the petitioner secured 88% marks in the aggregate and 89% in integrated science. In June 2006, because of her good performance in the CBSE Board Examinations, the petitioner was given an opportunity by the school to opt for the science stream. She opted for the same. Thereafter, she continue to attend classes and appear in the internal examinations of the school.

4. The examination system of the school is that there is a first report and a second report and then the final result is declared. The first report comprises of various components which includes the practical and theory half yearly exams as well as the weekly tests and assignments. In each of the reports the assignments have been marked out of 5 marks, the weekly tests carry a total of 25 marks, the practical exams are marked out of 30 and the theory papers are marked out of 70. The petitioner's mark-sheet, as set out in Annexure P-7 to the petition, indicates that the petitioner had obtained more than 33% marks in all the papers (theory and practical) in the first report. However, in the second report the petitioner had obtained 13 marks and 12 marks in Physics theory and Chemistry theory, respectively. These marks were each out of 70. This meant that the petitioner got 18.6% marks in the Physics theory paper and 17.1% in Chemistry theory. However, she passed in all her practical examinations. It may also be pointed out that the petitioner obtained 13 marks and 9 marks, both out of 25 marks, in Physics and Chemistry respectively in the weekly tests in respect of the first report. The petitioner, similarly, in respect of the second report, received 9 marks and 7-1/2 marks in weekly tests in respect of Physics and Chemistry respectively, both of which were allotted out of a total of 25 marks each. Accordingly, the petitioner obtained the following set of marks in Physics and Chemistry throughout the year in the weekly tests as well as the half yearly examinations:-

Sl. No.	Subject of Curriculum	1st REPORT				2nd REPORT			
		W. Test 25	EXAM (H.Y.)			W. Test 25	EXAM (H.Y.)		
			Pr. 30	Th. 70	Total 100		Pr. 30	Th. 70	Total 100
3	Physics	13	21	23	44	9	24	(13)	37
4	Chemistry	9	23	28	51	7-1/2	22	(12)	34

5. The counsel for the respondents submitted that the examination bye-laws of the Central Board of Secondary Education are applicable. The scheme of examinations and the pass criteria is set out in Chapter 7 of the bye-laws. Rule 37 relates to general conditions. Rule 37(i) stipulates that the scheme of examinations and pass criteria for All India/ Delhi Senior School Certificate and All India/ Delhi Secondary Examinations conducted by the Board, shall be as laid down from time to time. Rule 37(ii) provides as under:-

> "(ii) Class XI/IX examinations shall be conducted internally by the schools themselves."

6. Earlier, the CBSE had not prescribed any specific extent of marks that were required to be obtained by class XI students for promotion to class XII. However, this lacuna was remedied by introduction of Rule 40.1(vi) in the said examination bye-laws. The same reads as under:-

> "40.1(vi): In order to be declared as having passed the class XI Examination a candidate shall obtain 33% marks in all the subjects. The pass marks in each subject of examination shall be 33%. In case of subject involving practical work a candidate must obtain 33% marks in theory and 33% in practical separately in addition to 33% marks in aggregate in order to qualify in that subject."

It is an admitted position that the class XII examinations are to be conducted by the CBSE and, therefore, this Rule 40.1(vi) of the examination bye-laws would have to be complied with and the rules as prescribed by the Directorate of Education in respect of schools in Delhi in pursuance of Rule 41 of the Delhi School Education Rules, 1973 would to that extent be superseded by the provisions of Rule 40.1 (vi) of the examination bye-laws as amended. The said amendment was brought about pursuant to the recommendations of the examination committee which were duly ratified by the governing body of the Central Board of Secondary Education in its meeting held on 30.06.2006. A plain reading of the said newly added rule makes it clear that for any student to be declared as having passed the class IX examination, albeit conducted internally by the school themselves, he/ she must have obtained 33% marks in all the subjects and in cases of subjects involving practical work, he/ she must have obtained 33% in theory and 33% marks in practicals separately in addition to 33% marks in aggregate in order to qualify in that subject.

7. Going back to the marks obtained by the petitioner, I find that insofar as the practical exams are concerned, the petitioner obtained more than 33% marks in both Physics as well as Chemistry in both the reports and consequently in the final result also. However, if the theory marks in Physics are to be taken for the first and second half yearly exams, the petitioner obtained 36 marks out of a possible 140 marks which would amount to 25.7%.

Insofar as Chemistry is concerned, the combined marks of the first and second half yearly examinations would be 40 marks out of a total of 140 which would come to 28.6% marks. The learned counsel for the petitioner insisted that in computing the marks for the subject for the year even the weekly tests and assignments ought to be taken into account. Insofar as assignments are concerned, the same cannot be considered at all because the bye-laws speak of 33% marks in "examinations" and assignments do not fall within the category of examinations. However, weekly tests may be considered for the purposes of computing the marks obtained by the petitioner in the two subjects in which she finds herself in difficulty. If the aggregate of weekly tests and half yearly examinations are taken then the petitioner would get 58 marks out of a total of 190, which would translate to 30.5%. Similarly, for Chemistry, the petitioner would get a total of 56.5 marks out of a maximum of 190 marks, which would mean that she would have obtained 29.7% marks for Chemistry. This makes it clear that going strictly by the marks obtained by the petitioner, whether the weekly tests marks are included or not, the petitioner does not have the requisite 33% marks for Physics theory and Chemistry theory.

8. Faced with this position, the learned counsel for the petitioner submitted that the petitioner ought to be provided with an opportunity of a re-test in both the papers. She made this submission in view of the fact that the science stream was awarded to the petitioner only in June, 2006 after she had

already undergone study in another stream from April, 2006. She submitted that due to the shortened duration of her study period, her performance in the second half yearly examinations was not up to the mark and if another opportunity is provided then the petitioner would be able to clear both the papers with good marks in each of them.

9. However, the learned counsel for the respondents submitted that the choice of stream was changed on the request of the petitioner after the class X CBSE results were declared. So the petitioner knew very well that there was a shortened duration of study and she would have to cope with the same. Secondly, it was submitted on behalf of all the respondents that a re-test or a compartment examination could be held only in respect of one paper and not two papers as that was impermissible.

10. Since, the re-test route was also not possible, the learned counsel for the petitioner then submitted that the petitioner could be awarded grace marks as per the applicable rules. In this context the learned counsel for the CBSE submitted that the examination bye-laws are silent with respect to the award of grace marks. The learned counsel appearing on behalf of the Directorate of Education, Government of NCT of Delhi (the respondent No.3) submitted that as per the instructions framed under Rule 41 of the Delhi Education Rules, 1973, grace marks can be awarded for class IX and XI examinations. The relevant instruction is instruction 35.

11. The learned counsel who appeared on behalf of the Delhi Public School, submitted that, as stated in the affidavit of the Principal dated 14.05.2007, a student can be awarded a maximum of 5 grace marks in one subject only to enable his promotion to the next class. He also submitted that both, the award of grace marks and the option of appearing in a compartment examination, were not permitted to be availed of simultaneously.

12. The school almanac of the Delhi Public School does not mention any rule with regard to the grant of grace marks. It is only in the affidavit that the respondent school has mentioned that grace marks to the extent of 5 marks in the maximum and for one subject only is permissible.

13. Looking at the position taken by the three respondents, it is apparent that the examination bye-laws issued by the CBSE do not speak of any grace marks. However, it is also clear that Rule 37(ii) of the bye-laws prescribes that the class XI and IX examinations are to be conducted internally by the schools themselves. At this juncture, it would be relevant to refer to the instructions which have been issued by the Administrator of Delhi with regard to assessment, evaluation and promotion of students from one class to another for classes I to IX and XI w.e.f 2001-2002. These instructions have been issued under Rule 41 of the Delhi School Education Rules, 1973, which in turn,

have been issued under the Delhi School Education Act, 1973. Second 3 of the said Act empowers the Administrator to regulate education in schools and it provides that the Administrator may regulate education in all schools in Delhi in accordance with the provisions of this Act and the rules made thereunder. The instructions referred to above were issued in respect of all government and recognized aided and unaided schools in the National Capital Territory of Delhi and they were directed to follow the same with effect from the session of 2001-2002. Instruction 35 pertains to the grant of grace marks for classes IX and XI. The same reads as under:-

> "35. Grace Marks for Classes IX and XI: Grace marks upto a maximum of 10 in all, shall be awarded to a student to reach the minimum required 33% of marks in each of the subject (s), subject to the condition that a minimum of 25% of marks shall be secured in each subject at the comprehensive test as per Rule 29 to make him eligible for promotion, provided he/ she does not require more than 5 marks in a subject to come upto the minimum required of 33% of marks in that subject. However, no grace marks shall be awarded to a student taking the compartment examination."

Instruction 37 may also be noticed, which reads as under:-

> "37. All Recognised Unaided schools are required to comply with these instructions and no dilution of the criteria prescribed is permissible under any circumstances. If, however, a recognised Unaided school desires to have more stringent criteria than those prescribed in these instructions, it can do so provided it has sought and obtained the prior approval of the Director of Education. All such requests must reach the Office of the Director of Education by 30th April of the session at the latest."

14. If the said Instructions are to be followed then the petitioner would be entitled to a maximum of 10 grace marks to reach the minimum of 33% marks subject to the condition that a minimum of 25% marks shall be secured

in each subject at the comprehensive test as per Rule 29, to make him eligible for promotion. The petitioner has obtained the minimum of 25% marks in both Physics and Chemistry for the theory papers in the half yearly examinations. She had also obtained more than 25% marks, if the weekly tests are also included. However, in case the weekly tests are not included then she would, clearly, require more than 10 grace marks inasmuch as she achieved only 25.7% in Physics and 28.6% in Chemistry and she would not be able to qualify even if the 10 grace marks are given.

15. Let me now consider the case of the petitioner where the weekly tests are also taken into consideration. In the case of Physics, the petitioner would have obtained 58 marks (13+23+9+13) out of a total of 190 marks (25+ 70+25+70). Similarly, in Chemistry, taking into account the weekly tests also, the petitioner would have obtained 56.5 marks (9+28+7.5+12) out of the said total of 190 marks. To attain 33% out of a maximum of 190 marks, the petitioner is required to achieve 63 marks. Therefore, in the case of Physics, she would require 5 grace marks (63-58 = 5). This would leave her with a balance of 5 grace marks from the 10 that she is entitled to. In Chemistry, she would have obtained 56.5 or 57 marks out of 190. She would require six grace marks to achieve 33% (63-57 = 6). But only 5 grace marks are available to her. Therefore, even if the 10 grace marks are given to the petitioner as per the said

instructions, she would still fall short of the 33% marks in the Chemistry theory examinations.

16. This being the position, the petitioner cannot be declared to have qualified for promotion from class XI to class XII. Accordingly, this writ petition is dismissed. No costs.

BADAR DURREZ AHMED
(JUDGE)

May 22, 2007
SR